



## ESTATE ADMINISTRATION AND PROBATE

No two Estates are the same. The assets of someone who has died typically consist of money in banks or savings account(s), debts or other money due to the Estate, shares and other securities, property (e.g. their home, land or letting properties), interest in Trusts, foreign assets (holiday homes etc or stocks and shares) and personal possessions. There will also be liabilities which need to be paid, such as Inheritance tax, income/capital gains tax, utility bills (gas, water, electricity, council tax etc), credit card debts, mortgages, car hire purchase and funeral expenses.

If the person who died left a Will, it is the responsibility of the 'executors' to administer the Estate. If there was no Will, it is usually the next of kin who must do so, as 'administrators'.

### Duties of Executors, Administrators and Trustees

The duties and responsibilities of an executor/administrator and trustee can be complex and onerous. The office of Executor/Administrator/Trustee is one of responsibility and is not to be taken lightly. Failure to fully comply with his/her duties may render the executor/administrator personally liable for claims against the Estate, even when all the assets have been distributed

The duties of an executor/administrator include:

- Arranging the funeral
- Identifying and preserving the Estate assets
- Identifying the Estate creditors
- Calling in the assets, paying the liabilities and legacies
- Keeping accounts
- Identifying and paying tax due to the date of death
- Identifying and paying tax due during the administration of the Estate
- Administering the Estate in accordance with the Law
- Distributing the residue in accordance with the Will
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Once the assets have been called in, the executor/administrator holds these as a Trustee upon trust for the beneficiaries pending distribution. Where beneficiaries are under the age of 18 (or such later age as may be specified in the Will) the executor/administrator, as a trustee, continues to hold the assets in trust until the beneficiary attains the specified age. This may be some years in the future. The trustee must therefore be aware of his/her duties under the Trustee Act 1925 and the Trustee Act 2000.

### What is Probate?

Executors derive their authority to administer the Estate from the Will. The Grant of Probate is issued by the Probate Court and confirms the validity of the Will and authority to the person to whom it is issued to administer the Estate. **Obtaining a Grant of Probate is only one stage in the administration of the Estate.** It enables the executors to call in or otherwise deal with the assets, to be able to pay the liabilities and administer the Estate in accordance with the terms of the Will.

### What are Letters of Administration?

Where there is no Will, it is usually the 'next of kin' who must administer the Estate. To be able to do so, they must apply to the Court for a Grant of Letters of Administration. This is similar to a Grant of Probate in that the person named as Administrator is given authority to administer the Estate.

## The Rules of Intestacy

Where there is no Will, the Estate is distributed in accordance with the Rules of Intestacy. In simple terms, these are:

If the estate is worth less than £250,000, the spouse will inherit the entire estate.

- But if the estate is worth more than £250,000 and there are children:
- the spouse inherits up to £250,000 worth of assets, all the deceased's personal possessions, and half of the remainder of the estate.
- the other half is divided equally between the children.  
If any child is under the age of 18 when the person died, his or her share is held under Statutory Trusts. He or she will receive their inheritance when they reach the age of 18, or when they marry or enter into a civil partnership, whichever comes first.

## Is it necessary to obtain Probate/Letters of Administration?

It depends on the nature of the assets, their number, value and the complexities involved. For example, if all assets were held jointly with someone else, these may pass to the co-owner by way of survivorship and a Grant of Representation may not be necessary. Probate/Letters of Administration may only be required if assets exceed a certain value or if the assets are complex or if land /property passes under the terms of a Will or Intestacy.

## How much does it cost to obtain Probate?

As no two estates are the same, the cost of administering an Estate from start to finish will depend on the number of assets and liabilities involved, their complexities, the domicile of the person who has died, whether the Estate is taxable, whether tax exemptions and reliefs are available (these are not automatically applied and must be claimed), whether there are foreign assets and so on. Wills often create Trusts designed to minimise Inheritance Tax, protect against care fees, provide for the vulnerable or disabled or simply grant a beneficiary a life interest or right of occupation in an asset. Trusts may also be created by Statute where beneficiaries are under the age of 18 years (or such later age as may be specified in the Will). Potential issues may also arise if a disappointed beneficiary decides to challenge the validity of the Will or wishes to make an inheritance claim against the Estate

## Do I need to instruct a Solicitor?

This decision can only be made by you. You can make an online personal application for the Grant of Probate/Letters of Administration and administer the Estate yourself. We would only recommend that you do so for small and very straightforward Estates.

Hughes & Company offer a 30 minute fixed fee initial interview costing £90 + VAT (£108 total) to enable you to discuss the Estate with us and obtain general advice. Few people are familiar with the administration of an Estate or the duties of an executor/trustee. Advice and guidance from us can avoid many of the common dangers and pitfalls, particularly in relation to tax and trust issues. It will also enable us to identify the nature and extent of the assets and liabilities and provide an initial estimate of fees. If we are subsequently instructed, that estimate of fees will be confirmed in writing and your acceptance obtained before any work is undertaken.

If the value of the assets exceeds the Inheritance Tax threshold (currently £325,000), there is the potential for Inheritance tax to be payable. If you are unaware of the tax exemptions/allowances available, you could end up paying tax unnecessarily. Many of the exemptions/allowances available **must be claimed** – they are not automatically applied and the tax laws are highly complex. If not claimed, substantial tax may be unnecessarily paid. Unless all tax liabilities are met in full, executors can find themselves personally liable for any shortfall.

Trusts may be implied by Statute or created by the Will. This is a highly specialist area of Law. Failure to comply with your obligations as a trustee (and the Will usually names you as 'the executor and trustee) could result in you committing a breach of trust, rendering you personally liable for any losses sustained by the beneficiaries.

It is often the case that changes in the law and, particularly, in tax laws may have occurred since the Will was made. This can often result in avoidable Inheritance Tax becoming payable or in the loss of tax exemptions. Where there is no Will, the Rules of Intestacy can often produce unwanted results or Families may wish to agree to vary the dispositions made in the Will to meet changed circumstances. In such cases, it is often possible, within two years of the date of death, to vary the terms of the Will to avoid payment of unnecessary Inheritance Tax or to change the way assets are distributed, by means of a **Deed of Variation of the Will** or **Deed of Family Arrangement**. A Solicitor will be able to identify circumstances where this may be beneficial and advise on the terms of any Deed of Variation.

A disappointed beneficiary may seek to challenge the validity of the Will or make a claim under the Inheritance (Provision for Family and Dependants) Act 1975. We have specialists with expert qualifications to deal with such claims. There are time limits for such claims to be made and the Estate should not be distributed until after the time limit has expired

Instructing a Solicitor gives you the assurance and safeguards provided by Solicitors. Solicitors are thoroughly trained and rigorously tested in their knowledge of the Law. They have to abide by a strict professional code of conduct and are regulated by an independent body (the SRA) to ensure that they act in an ethical and professional manner. They are backed by the Solicitor's Compensation Fund and have to maintain professional indemnity insurance in a minimum sum of £2million, in case something goes wrong. At Hughes & Company, we have a qualified Trust and Estate Practitioner with specialist qualifications in the Law of Trusts and Probate who must, in addition to complying with the Solicitor's Code of Conduct, also abide by the rules of conduct of the Society of Trust and Estate Practitioners (STEP) and the Association of Contentious Trust and Probate Specialists (ACTAPS).

#### **GRANT ONLY applications**

If you feel competent to deal with the administration of the Estate yourself but would prefer a professional to obtain the Grant of Probate/Letters of Administration, we offer a fixed fee service.

Where the Estate is simple and requires only a Return of Estate Information (IHT205) to be delivered to HM Revenue & Customs, we will obtain the Grant of Representation for you. We will do so on the basis that you provide us with all relevant information about the person who has died and valuations of all the assets and liabilities at the date of death. We will then prepare the Return of Estate Information, the Executor's/Administrator's Oath, make application to the Probate Court and deliver to you the copy Grant of Probate to enable you to call in the assets and complete the administration yourself. Our fee for this service is £850 + £170 VAT – a total of £1,020.

If the Estate is more complex and requires an Inheritance Tax Account (IHT400) to be submitted, our fee for obtaining the Grant only will be £1,500 + £300 VAT – a total of £1,800

In addition to the fixed fees above, additional payments (disbursements) may need to be made, such as:

Court fee	£155.00
Copy Grants	£ 1.50 per copy
Case management fee	£ 88.00 + VAT

There may also be other disbursements payable, depending on the nature of the assets, such as Land Registry fees

If Inheritance Tax is payable and we are required to calculate this and make arrangements for the tax to be paid in order to be able to apply for the Grant, we will also charge for the time it takes us to do so at the hourly rate of the fee earner involved plus VAT. The hourly rates are set out in our Terms and Conditions of Engagement. The time it takes to undertake this work will depend entirely on the complexity of the Estate and the tax issues involved.

If, having obtained the Grant for you, you then need our further assistance, the time involved will be billed at the hourly rate of the person assisting you plus VAT and disbursements

## Full Administration

If you wish us to undertake the full administration, we are happy to do so. This will include obtaining details from you of all assets and liabilities, obtaining date of death valuations, preparing the appropriate return to HMRC and, where appropriate, calculating and arranging payment of any Inheritance Tax payable, preparing the Executors Oath, application to the Court for the Grant, registering the Grant as appropriate and calling in or otherwise dealing with the assets in accordance with your instructions, paying liabilities and administration expenses, paying pecuniary legacies, preparing Administration Accounts for approval, settling any tax due for the period of the administration and obtaining tax clearance where appropriate, distributing the residuary estate in accordance with the terms of the Will and preparing tax certificates for the beneficiaries.

Our fees for a full administration are based on a Value element plus a fee for the time engaged. The 'value element' is calculated as follows:

### Solicitor not acting as Executor

Value of gross estate less residence	(up to £1 million)	1%
	(£1M to £4M)	0.5%
	(£4M to £8M)	0.1666%
	(above £8 Million)	0.08333%
Value of residence		0.5%

### Solicitor as sole executor or joint executor with another person

Value of gross estate less residence	(up to £1 Million)	1.5%
	(£1M to £4M)	0.5%
	(£4M to £8M)	0.1666%
	(above £8 Million)	0.08333%
Value of residence		0.75%

VAT is added to the resultant value element at the current rate

The fee element depends entirely on the complexity of the Estate and the time it takes to complete the administration. It is calculated at the hourly rate of the member of our Staff involved in the work. Wherever possible, routine matters are dealt with by more junior staff in order to minimise fees. If we are given full details of all matters affecting the Estate, we will be happy to provide a written estimate of the likely overall fees for dealing with the administration

The time to obtain a Grant of Representation only for a simple Estate is likely to be between 6 – 8 weeks from application. For more complex Estates where Inheritance Tax is payable, this is likely to increase to 12 – 20 weeks in straightforward cases. For a full administration, it is usual for a straightforward Estate to be completed within 12 – 18 months although, depending on complexities, it could take longer